



## INTERIOR BOARD OF INDIAN APPEALS

Virginia Grider, a.k.a. Lela Virginia Potts Grider, a.k.a. Lela Virginia Arnold  
v. Eastern Oklahoma Regional Director, Bureau of Indian Affairs

40 IBIA 139 (10/19/2004)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

VIRGINIA GRIDER, a.k.a. LELA	:	Order Dismissing Appeal
VIRGINIA POTTS GRIDER, a.k.a.	:	
LELA VIRGINIA ARNOLD,	:	
Appellant,	:	
	:	
v.	:	Docket No. IBIA 05-4-A
	:	
EASTERN OKLAHOMA REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	October 19, 2004

Appellant Virginia Grider appealed an August 16, 2004, decision of the Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director), which denied Appellant's request to place land into restricted status.

Appeals to the Board must be filed within 30 days from the date on which Appellant receives the decision for which an appeal is filed. 43 C.F.R. § 4.332(a). The 30-day time period is jurisdictional.

In a September 29, 2004, pre-docketing notice and order to show cause, the Board of Indian Appeals (Board) ordered Appellant, on or before October 12, 2004, to show why this appeal should not be dismissed as untimely. Appellant mailed a notice of appeal on September 9, 2004, but to the former address for the Board, instead of its current address. The notice of appeal received by the Board was postmarked September 23, 2004, more than 30 days after Appellant received the Regional Director's decision. In her notice of appeal, Appellant acknowledged that she received the August 16, 2004, decision on August 17. Appellant explained that she had called the Office of Hearings and Appeals to confirm the address and reached its voice mail, whereupon she contacted the telephone company and received the Board's former address of 4015 Wilson Blvd., Arlington, VA 22203.

In its order to show cause, the Board pointed out that the August 16, 2004, decision itself informs Appellant that the decision may be appealed to the Board within thirty days at "801 N. Quincy St., Suite 300, Arlington, VA 22203," the Board's correct and current address. In addition, 43 C.F.R. § 4.332 (a) also lists the correct current address for filings with the Board.

In response to the Board's show cause order, Appellant explained that a good faith effort was made to timely file Appellant's notice of appeal and that the notice of appeal was mailed to the Board's former address as a result of mere inadvertence. While the Board appreciates counsel's good faith efforts, the Board is without jurisdiction to extend the thirty-day time limit for any reason, including good faith efforts. Section 4.332 (a) of 43 C.F.R. states in pertinent part: "A notice of appeal not timely filed shall be dismissed for lack of jurisdiction." See, e.g. Renville-Pipeboy v. Acting Great Plains Regional Director, 39 IBIA 188, 189 (2003); Parisien v. Acting Aberdeen Area Director, 28 IBIA 35, 36 (1995).

An appellant who has been provided the correct appeal instructions in a Regional Director's decision is responsible for complying with those instructions, even where appellant has relied on incorrect advice received from another source. Alan-Wilson v. Acting Sacramento Area Director, 32 IBIA 92, 94 (1998). See also Stovall v. Billings Area Director, 31 IBIA 41, 42 (1997) (appellant is not relieved of his responsibility to file a timely appeal even where a BIA employee gave appellant incorrect appeal instructions, where the decision from which the appeal was taken provided accurate appeal instructions).

Appellant further argues that she mailed a copy of the notice of appeal to the Regional Director's correct address and contends that the Regional Director has not been prejudiced since he was clearly on notice that the appeal was being made. She relies on Consolidated Freightways Corp. of Delaware v. Larson, 827 F.2d 916 (3rd Cir. 1987), for the proposition that an inadvertently mis-addressed filing is nonetheless acceptable where there is good faith and due diligence as well as an expeditious attempt to cure the delay. However, Consolidated Freightways is inapposite, for, in that case, the notice of appeal was timely filed with a U.S. District Court, albeit the wrong district of the federal court. Nevertheless, the Federal Rules of Appellate Procedure on which the Third Circuit in Consolidated Freightways relied are not applicable to the Board's jurisdiction, which is delineated by its regulations. Under these circumstances, the notice of appeal is untimely.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses this appeal for lack of jurisdiction.

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// original signed  
Colette J. Winston  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge